

Wednesday, September 17, 2008

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**SALES AND USE TAX APPEALS HEARING**

Juan Carlos Morales, 389924 (KH)

8-1-04 to 2-12-06, \$9,824.29 Tax, \$8,420.30 Penalties

For Petitioner: Juan C. Morales, Taxpayer

For Sales and Use Tax Department: Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was a responsible person who is personally liable for the outstanding liabilities of Family Sports Pizza and Grill, LLC for the period December 2, 2005, to February 12, 2006, in addition to the conceded period of August 1, 2004, to March 31, 2005.

Whether petitioner has established reasonable cause sufficient to relieve the late payment, failure to file return, and finality penalties originally assessed against Family Sports Pizza and Grill, LLC for the periods August 1, 2004, to March 31, 2005, and December 2, 2005, to February 12, 2006.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**PUBLIC HEARING****Proposed Amendments to Sales and Use Tax Regulations 1591, *Medicines and Medical Devices*, and 1602, *Food Products***

Robert Tucker, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to Sales and Use Tax Regulations 1591, *Medicines and Medical Devices* and 1602, *Food Product*, to clarify that when a dietary supplement or adjunct product does not qualify as a food product, it may qualify as medicine if furnished by a physician as part of a medically supervised weight loss program to treat obesity. (Exhibit 9.2.)

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted amendments to the regulations as recommended by staff.

Exhibits to these minutes are incorporated by reference.

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## CHIEF COUNSEL MATTERS

### RULEMAKING

#### **Proposed Amendments to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability***

Tim Treichelt, Tax Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 changes to Sales and Use Tax Regulation 1702.5, *Responsible Person Liability*. Approval of the proposed amendments incorporate the provisions of AB 1895 (Ch. 24, Stat. of 2008) regarding the statute of limitations for issuing deficiency determinations to corporate officers or other responsible persons. (Exhibit 9.3.)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes as recommended by staff.

## ADMINISTRATIVE SESSION

### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California. (Exhibit 9.4.)

LouVena Alexander, Information Systems Technician Supervisor II, Technology Services Division, Headquarters

Paul Bacchi, Data Processing Manager II, Technology Services Division, Headquarters

Linda Dwyer, Secretary, Investigations Division, Headquarters

Bonnie Jeanene Geller, Tax Technician III, West Covina District Office

Bonnie Peach, Data Processing Manager III, Technology Services Division, Headquarters

Joyce Vincenty, Senior Information Systems Analyst Specialist, Technology Services Division, Headquarters

Action: Approve the Board Meeting Minutes of August 5-7, 2008.

Action: Approve the 2009 diesel fuel tax rate for interstate users. (Exhibit 9.5.)

Action: Approve the 2009 Hazardous Substances Program Fees and Occupational Lead Poisoning Prevention Fee. (Exhibit 9.6.)

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**ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS****Business Taxes Committee**

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein. (Exhibit 9.7.)

Committee votes were as follows:

The committee approved and authorized for publication the proposed regulatory amendments to Regulation 1506, *Miscellaneous Service Enterprises*, and Regulation 1524, *Manufacturers of Personal Property*, as recommended by staff, with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

The committee approved and authorized for publication the proposed regulatory amendments to Regulation 1705, *Relief from Liability*, as recommended by staff, with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

**Property Tax Committee**

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein. (Exhibit 9.8.)

Committee vote was as follows:

The committee adopted the staff-recommended petition procedures and guidelines for personal property and fixtures valuation, with Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

**OTHER ADMINISTRATIVE MATTERS****Deputy Directors Reports*****Collection Enhancement Task Force Update***

Randie Henry, Deputy Director, Sales and Use Tax Department, provided an update on the recent activities and accomplishments of the Collections Enhancement Task Force and a revised action plan for the Task Force. (Exhibit 9.9.)

Speakers: Bobbi Smith, Business Taxes Representative, Centralized Collections Section, Sales and Use Tax Department, President-of DLC 782 of SEIU Local 1000, and member of the Collection Enhancement Task Force

Ms. Yee directed staff to provide, as part of the presentation of the upcoming task force report, the history of augmentation to the collections program since the large cuts in that area, to determine whether resources have been restored, and invited additional proposals with respect to properly utilizing collections staff for bringing in revenue rather than working the front counter.

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***Interagency Agreement Contract Over \$1 Million***

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the interagency agreement contract over \$1 million with SICPA Products Security, which is an extension of the vendor contract for a one-year term for the production of the State's cigarette tax stamp. (Exhibit 9.10.)

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the contract over \$1 million with SICPA Products Security.

***BOE's Green Day***

Elizabeth Houser, Deputy Director, Administration Department, reported on BOE's Green Day. Ms. Houser introduced Catherine Stroh, Analyst, Appeals Division, Legal Department, who reported that BOE's two charitable organizations, Charitable Activities Council, Inc., and Capitol Area Child Care Consortium, Inc., will be sponsoring a recycle day to be held at BOE Headquarters day care's play yard. Children of the day care center presented personalized invitations for the event to the Members of the Board.

Dr. Chu presented a certificate of appreciation to Roberta Hinchman, Manager, Contract and Procurement Section, Administration Department; and, Wayne Williams, Manager, Network Infrastructure Support, Technology Services Division; in recognition of their dedication to energy conservation and for taking initiative to explore other savings strategies for BOE. Roberta and Wayne secured a \$27,000 energy rebate from SMUD's Network PC Power Management Software Express Incentive Program designed to rebate the cost of certain software that reduces power consumption of PCs and laptops.

***Facilities Update***

Elizabeth Houser, Deputy Director, Administration Department, provided an update on the space assessment project and status of on-going headquarters repair projects. (Exhibit 9.11.)

Speaker: Bobbi Smith, Business Taxes Representative, Centralized Collections Section,  
Sales and Use Tax Department, and President-of DLC 782 of SEIU  
Local 1000

Mr. Leonard directed the SEIU Union Representative to contact its members and DGS to determine how much of a priority has been placed on moving BOE employees out of the building and impress upon union members who work for DGS to consider this a top priority.

***Fiscal Year 2008/09 Draft Budget Update***

Elizabeth Houser, Deputy Director, Administration Department, provided the current status of the 2008/09 Budget, including the Proposed Amnesty Program and the 1 percent sales tax increase.

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***Fiscal Year 2009/10 Budget Change Proposals***

Elizabeth Houser, Deputy Director, Administration Department, presented the 2009/2010 draft budget change proposals for approval. (Exhibit 9.12.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP U.S. Customs Program*, as recommended by staff.

Action: (Motion expunged after Closed Session.)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Environmental Stewardship Program*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Natural Gas Public Purpose Programs Surcharge*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Flavored Malt Beverages*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Cigarette and Tobacco Enforcement*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved the *BCP Administrative Appeals*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved the *BCP Tax Refund Litigation*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the *BCP Facilities – Headquarters*, as recommended by staff.

***Digital Board of Equalization – Our Initial Roadmap to Becoming Digital***

Anna Brannen, Deputy Director, Technology Services Department, reported on the Digital Board of Equalization, a paper presenting initial findings and recommendations enabling taxpayers and staff to access BOE information any way, any time, any place. (Exhibit 9.13.)

Speaker: Bobbi Smith, Business Taxes Representative, Centralized Collections Section,  
Sales and Use Tax Department, and President-of DLC 782 of SEIU  
Local 1000

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
SEPTEMBER 17, 2008**

Juan Carlos Morales, 389924 (KH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division, and directed staff to review the dual liability.

**SALES AND USE TAX APPEALS HEARINGS**

Pine Meadows Partners, Inc., 358977 (KH)

4-1-05 to 6-30-05, \$40,968.16 Tax, \$4,096.82 Failure to File Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether retail sales of materials to petitioner were subject to sales tax, meaning that petitioner's use of those materials were exempt from use tax.

Whether there is a basis for recommending relief of the failure-to-file penalty.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Jewelry by Michael Alan, Inc., 290752, 316317, 380958 (KH)

4-1-00 to 12-31-01, \$28,615.95 Tax, \$2,861.51 Negligence Penalty, \$4,765.36 Amnesty Interest Penalty

4-1-00 to 12-31-01, \$16,927.00 Claim for Refund

7-1-04 to 6-30-05, \$13,512.53 Tax, \$1,634.15 Negligence Penalty

Michael Alan Morales, 293200, 316479, 395457 (KH)

4-1-00 to 12-31-01, \$9,211.00 Tax, \$921.00 Negligence Penalty

4-1-00 to 12-31-01, \$17,704.00 Claim for Refund

7-1-04 to 6-30-05, \$12,188.21 Tax, \$1,318.82 Negligence Penalty

Teresa A. Morales, 293201, 317278 (KH)

4-1-00 to 12-31-01, \$9,211.00 Tax, \$921.00 Negligence Penalty

4-1-00 to 12-31-01, \$17,704.00 Claim for Refund

For Petitioner/Claimant: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Jewelry Bu Michael Alan, Inc. is entitled to any further reduction to the determined tax liabilities.

Whether Jewelry Bu Michael Alan, Inc. was negligent.

Whether Mr. Morales and Ms. Morales are personally responsible for the tax liabilities incurred by Jewelry Bu Michael Alan, Inc. while its corporate status was suspended.

Whether the claims for refund should be granted.

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Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claims and petitions be redetermined as recommended by the Appeals Division.

EPAC Technologies, Inc., 396039 (CH)

7-1-03 to 6-30-06, \$23,432.06 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner should be relieved of the tax and interest applicable to its sales of special printing aids based on its alleged reliance on erroneous advice received during a prior audit.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with staff's revised recommendation.

Dr. Chu directed the Department to send a letter to staff to clarify the Board's policy as it relates to the issue in the above case to ensure uniformity throughout the districts.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 11:30 a.m. and reconvened immediately in closed session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)(2)(B)(i)) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 1:30 p.m. and reconvened immediately in open session with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointment of Kevin Hanks to the position of Chief, Headquarters Operations Division, Sales and Use Tax Department.

### ***Fiscal Year 2009/10 Budget Change Proposals***

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that its previous motion to approve the *BCP Out-of-State Audits and Registration*, as recommended by staff, be expunged.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved the *BCP Out-of-State Audits and Registration*, as recommended by staff.

The Board adjourned at 1:35 p.m.

*The foregoing minutes are adopted by the Board on November 13, 2008.*